

MINNESOTA
MEDICAL ASSISTANCE
Federal Budget Impact of Proposed State Plan Amendment TN 98-29
Attachment 4.34-A: Advance Directives

Proposed State plan amendment TN 98-29 reformats Attachment 4.34-A due to state legislation establishing one tool -- the Health Care Directive -- which includes the important elements of the living will and durable power of attorney for health care. Therefore, current Attachment 4.34-A has been updated.

A workgroup with representation from the Minnesota Department of Health, the Attorney General's Office, the Ombudsman for Older Minnesotans and the Minnesota Board on Aging met to draft new language for an information pamphlet. This information will be handed out to residents of institutions, managed care enrollees, and others. This State plan amendment follows the language of the proposed pamphlet.

Language regarding guardianship and conservatorship has been deleted because members of the workgroup recognized that it did not directly apply to advance directives. The old section on "Other Questions" has been deleted, because its content is found in the new language.

There is no federal or state budget impact due to TN 98-29.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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**REQUIREMENTS FOR HEALTH CARE DIRECTIVES UNDER
STATE PLANS FOR MEDICAL ASSISTANCE**

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives (in Minnesota, known as health care directives). If applicable, States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

**HEALTH CARE DIRECTIVES:
QUESTIONS AND ANSWERS ABOUT MINNESOTA LAW¹**

Minnesota law allows you to inform others of your health care wishes. You have the right to state your wishes or appoint an agent in writing so others know what you want if you can't tell them because of illness or injury. The information that follows tells about health care directives and how to prepare them. It does not give every detail of the law.

If you want more information, contact your health care provider, your attorney, the Office of the Ombudsman for Older Minnesotans (1-800-657-3591 or 651-296-0382), or the University of Minnesota Extension Service (1-800-876-8636 or 612-624-4900), e-mail: order@dc.extension.umn.edu.

Prepared by the Minnesota Department of Health, Division of Facility and Provider Compliance, in fulfillment of §1902(a)(58) of the Social Security Act, August 1998. This reflects reading level changes suggested by the Minnesota Department of Human Services, Health Care Administration.

TN No. 98-29
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What is a health care directive?

A health care directive is a written document that informs others of your wishes about your health care. It allows you to name a person ("agent") to decide for you if you are unable to decide. It also allows you to name an agent if you want someone else to decide for you. You must be at least 18 years old to make a health care directive.

Why have a health care directive?

A health care directive is important if your attending physician determines you can't communicate your health care choices (because of physical or mental incapacity). It is also important if you wish to have someone else make your health care decisions. In some circumstances, your directive may state that you want someone other than an attending physician to decide when you cannot make your own decisions.

Must I have a health care directive? What happens if I don't have one?

You don't have to have a health care directive. But, writing one helps to make sure your wishes are followed.

You will still receive medical treatment if you don't have a written directive. Health care providers will listen to what people close to you say about your treatment preferences, but the best way to be sure your wishes are followed is to have a health care directive.

How do I make a health care directive?

There are forms for health care directives. You can get them from your health care provider, attorney, or the Minnesota Board on Aging (1-800-882-6262 or 651-296-2770). You don't have to use a form, but your health care directive must meet the following **requirements** to be legal:

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- be in writing and dated.
- state your name.
- be signed by you or someone you authorize to sign for you, when you can understand and communicate your health care wishes.
- have your signature verified by a notary public or two witnesses.
- include the appointment of an agent to make health care decisions for you and/or instructions about the health care choices you wish to make.

Before you prepare or revise your directive, you should discuss your health care wishes with your doctor or other health care provider.

I prepared my directive in another state. Is it still good?

Health care directives prepared in other states are legal if they meet the requirements of the other state's laws or the Minnesota requirements. But requests for assisted suicide will not be followed.

What can I put in a health care directive?

You have many choices of what to put in your health care directive. For example, you may include:

- the person you trust as your agent to make health care decisions for you.
You can name alternate agents in case the first agent is unavailable, or joint agents
- your goals, values and preferences about health care.
- the types of medical treatment you would want (or not want).
- how you want your agent or agents to decide.
- where you want to receive care.
- instructions about artificial nutrition and hydration.
- mental health treatments that use electroshock therapy or neuroleptic medications.
- instructions if you are pregnant.
- donation of organs, tissues and eyes.
- funeral arrangements.
- who you would like as your guardian or conservator if there is a court action.

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You may be as specific or as general as you wish. You can choose which issues or treatments to deal with in your health care directive.

Are there any limits to what I can put in my health care directive?

There are some limits about what you can put in your health care directive. For instance:

- your agent must be at least 18 years of age.
- your agent cannot be your health care provider, unless the health care provider is a family member or you give reasons for the naming of the agent in your directive.
- you cannot request health care treatment that is outside of reasonable medical practice.
- you cannot request assisted suicide.

How long does a health care directive last? Can I change it?

Your health care directive lasts until you change or cancel it. As long as the changes meet the health care directive requirements listed above, you may cancel your directive by any of the following:

- a written statement saying you want to cancel it.
- destroying it.
- telling at least two other people you want to cancel it.
- writing a new health care directive.

What if my health care provider refuses to follow my health care directive?

Your health care provider must follow your health care directive, or any instructions from your agent, as long as the health care follows reasonable medical practice. But, you or your agent cannot request treatment that will not help you or which the provider cannot provide. If the provider cannot follow your agent's directions about life-sustaining treatment, the provider must inform the agent. The provider must also document the notice in your medical record. The provider must allow the agent to arrange to transfer you to another provider who will follow the agent's directions.

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What if I've already prepared a health care document? Is it still good?

Before August 1, 1998, Minnesota law provided for several other types of directives, including living wills, durable health care powers of attorney and mental health declarations.

The law changed so people can use one form for all their health care instructions.

Forms created before August 1, 1998, are still legal if they followed the law in effect when written. They are also legal if they meet the requirements of the new law (described above). You may want to review any existing documents to make sure they say what you want and meet all requirements.

What should I do with my health care directive after I have signed it?

You should inform others of your health care directive and give people copies of it. You may wish to inform family members, your health care agent or agents, and your health care providers that you have a health care directive. You should give them a copy. It's a good idea to review and update your directive as your needs change. Keep it in a safe place where it is easily found.